LIBRARY
SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 18

WILLIAM BECK, PETITIONER,

vs.

OHIO.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

PETITION FOR CERTIORARI FILED DECEMBER 23, 1963
CERTIORARI GRANTED FEBRUARY 17, 1964

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 696

WILLIAM BECK, PETITIONER,

vs.

OHIO.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

INDEX

	Original	Print
Record from the Cleveland Municipal Court		
Affidavit of Michael Haney, dated November 13, 1961, Case No. 775,552	A	1
Warrant for possession of "Clearing House Slips"	B	2
Motion to suppress	C	3
Bill of exceptions, December 7, 1961	3	4
Testimony of Carl Delau—		
direct	4	5
cross	8	7
Offer in evidence	9	8
Testimony of Carl Delau—		
redirect	9	8
Both parties rest	15	11
Stipulation	16	12
Court's finding—motion to suppress overruled	17	12
Mandate of Court of Appeals of Ohio, Eighth District, Cuyahoga County, dated July 12, 1962, Case No. 25890 to Municipal Court	18	13
Proceedings in the Supreme Court of Ohio	20	15
Opinion, Zimmerman, J., Case No. 37808	20	15
Dissenting opinion, Gibson, J.	24	20
Judgment	32	26
Journal entry denying rehearing	32	27
Order allowing certiorari	33	27

RECORD PRESS, PRINTERS, NEW YORK, N. Y., APRIL 15, 1964

[fol. A]

IN CLEVELAND MUNICIPAL COURT

AFFIDAVIT—POSSESSION OF POLICY, CLEARING HOUSE, ETC.—
Filed November 13, 1961

R. C. 2915.111

The State of Ohio,
Cuyahoga County,
City of Cleveland, ss.

Before me, J. F. Dempsey Deputy Clerk of Cleveland Municipal Court personally came Michael Haney who being duly sworn according to law, deposes and says, that on or about the 10 day of November A. D. 1961, at the said City and County, one William E. Beck did unlawfully own, possess, have on or about his person, have in his custody or have under his control a certain quantity of clearing house slips representing a number of shares or an interest in a scheme of chance known as the "Numbers Game", to-wit: clearing house

and further deponent says not; contrary to the form of the Statute in such cases made and provided and, against the peace and dignity of the State of Ohio.

Michael Haney, Ptl. #258.

Sworn to and subscribed before me, this 13 day of Nov. A. D., 1961.

Ralph S. Locher, Prosecuting Attorney, of Cleveland Municipal Court, By Paul D. White, Assistant Prosecutor.

Helen J. Lyons, Clerk of Cleveland Municipal Court,
By J. F. Dempsey, Deputy Clerk.

[fol. B]

IN THE CLEVELAND MUNICIPAL COURT

R. C. 2915.111

WARRANT—POSSESSION OF POLICY SLIPS—November 13, 1961

The State of Ohio,
Cuyahoga County,
City of Cleveland, ss.

To the Bailiff of the Municipal Court of Cleveland—Greeting:

Whereas, Complaint upon oath by Michael Haney has this day been filed with me, Helen J. Lyons, Clerk of the Municipal Court of Cleveland, that on or about the 10 day of Nov. A. D. 1961, at said City and County, one William E. Beck did unlawfully have in his possession, or in his custody, or under his control, a certain quantity of clearing house slips which represents or is a memorandum of, or is evidence of, or which is designed or intended to be used as a memorandum or evidence of, or which is designed or intended to be used in the process of making, settling, paying, registering, evidencing or recording an interest in a certain scheme of chance, to-wit: clearing house

and further deponent says not; contrary to the form of an Ordinance of said City in such cases made and provided.

These Are Therefore, in the name of the State of Ohio, to command you that you take the said Defendant if he be found in your jurisdiction and take and safely keep the said defendant, so that you have him forthwith before our Municipal Court, to answer to said complaint, and be dealt with according to law.

Given Under My Hand, and the seal of said Court, this 13 day of Nov. A. D. 1961.

Helen J. Lyons, Clerk of the Municipal Court of Cleveland, By J. F. Dempsey, Deputy Clerk of the Municipal Court of Cleveland.

[fol. C]

IN THE CLEVELAND MUNICIPAL COURT

CRIMINAL BRANCH

Case No. 775552

STATE OF OHIO, Plaintiff,

—vs.—

WILLIAM BECK, Defendant.

MOTION TO SUPPRESS—Filed December 4, 1961

State of Ohio,
Cuyahoga County, ss.:

Now comes the defendant, William Beck, by his Attorney James R. Willis and respectfully moves this Court for an order suppressing certain evidence herein, and in support thereof avers as follows:

That the defendant herein is charged with a violation of Revised Code of Ohio, Section 2915.111, wherein it is alleged that on or about the 10th day of November, 1961, he had in his possession or under his control certain illegal clearinghouse slips.

That on the above date, he was the operator of a vehicle being driven in The City of Cleveland, that at said time certain members of The Cleveland Police Department, whose names are unknown to this motion, curbed the vehicle in which the defendant was traveling, and illegally detained, arrested and searched the defendant.

Your petitioner further states that, at the time of said search and seizure the aforementioned officers did not have a search warrant, an arrest warrant, nor any other process for the arrest of your petitioner, and the search of his property. Further that at the time of his arrest he was not informed of the cause of his arrest.

[fol. D] That the aforementioned arrest, search and seizure was without authority, unwarranted, illegal, unreasonable, unconstitutionally and void in that it violates the

Fourth Amendment to The Constitution of The United States and the use of any property seized as alleged evidence infringes upon the privilege against self-incrimination, as guaranteed by the Fifth Amendment to The Constitution of The United States.

Wherefore, your petitioner prays that an order be entered by this Court suppressing the items so unlawfully seized and that the same be excluded as evidence against the petitioner upon the trial of this cause, further that all conversations after said illegal arrest be similarly ordered suppressed.

James R. Willis, Attorney for Defendant, 202 C.T.S. Building, 1404 East Ninth Street, Cleveland 14, Ohio, 781-1020.

[fol. E] [File endorsement omitted]

[fol. 3]

[File endorsement omitted]

State of Ohio,
County of Cuyahoga,
City of Cleveland, ss.:

IN THE CLEVELAND MUNICIPAL COURT

CRIMINAL BRANCH

No. 775,552

STATE OF OHIO, Plaintiff,

—vs.—

WILLIAM BECK, Defendant.

Defendant's Bill of Exceptions—Filed December 14, 1961

Be It Remembered that on Thursday, December 7, 1961, this cause came on for hearing in Court Room No. 2 of said Court, before the Honorable Hugh A. Corrigan, one of the Judges of said Court.

Whereupon the following proceedings were had:

[fol. 4] DEFENDANT'S MOTION TO SUPPRESS

Thereupon the defendant, to maintain the issues on his part to be maintained as to the motion to suppress the evidence filed in this cause, a copy of which is attached hereto as Appendix A and incorporated herein by reference, called as a witness one Carl Delau, who, having been first duly sworn, was examined and testified as follows:

CARL DELAU.

Direct examination.

By Mr. Willis:

Q. Sergeant, will you state your full name, please?
A. Carl Delau, D-e-l-a-u.
Q. And you are a member of the Cleveland Police Department assigned to the Bureau of Special Investigations?
A. Yes, I am.
Q. You participated then in the arrest of William Beck?
A. I did participate.
Q. Was that on the 10th day of November of 1961?
A. It was.
Q. Where approximately was it where you arrested Mr. Beck?
A. I arrested him on Beulah Avenue, just off East 115th Street, at 1:00 o'clock on that date.
Q. Beulah is between Ashbury and Superior Avenues, generally?
A. Yes; running east and west.
[fol. 5] Q. About what time was it that you first saw Mr. Beck?
A. A few minutes before 1:00 p.m. that afternoon.
Q. And he was in his automobile?
A. He was driving his automobile.
Q. He was proceeding then lawfully down the street?
A. He was operating north on 115th Street.
Q. And you stopped him?
A. We stopped him going east on Beulah.
Q. You did not stop him for any traffic offense?
A. No; I did not stop him for that reason.

Q. You caused him to pull over to the curb?

A. I identified myself and requested him to pull over to the curb.

Q. Then you searched his automobile?

A. Yes, I did.

Q. Prior to that, did you indicate to him that he was under arrest?

A. Not while searching the automobile.

Q. In other words, you searched the automobile before you placed him under arrest?

A. I placed him under arrest just as we were searching the automobile.

Q. Prior to that time, you had not discovered anything that was illegal?

A. Other than a hunting knife in the automobile, that [fol. 6] was it.

Q. Why then did you place him under arrest?

A. I placed him under arrest for a clearing house operation, scheme of chance.

Q. At that time, you had discovered some evidence of a scheme of chance?

A. I did not.

Q. At the time you place him under arrest, you did not have any evidence?

A. Other than information.

Q. In other words, you heard rumors?

A. I heard reports and found that he has a record in connection with clearing house and scheme of chance.

Q. Previous convictions?

A. Yes.

Q. On this information, you arrested him on the City streets?

A. On Beulah Avenue.

Q. And you searched the automobile?

A. Yes.

Q. Did you find anything as a result of that search?

A. No.

Q. Then what did you do?

A. I conveyed him to the Fifth District, where we searched him.

[fol. 7] Q. In other words, you didn't find anything as a result of your search of the automobile?

A. That is correct.

Q. Then he was transported to the Fifth District Station, which is on Chester Avenue?

A. 107th and Chester.

Q. At 107th and Chester, you then searched Mr. Beck?

A. I did.

Q. Prior to your searching of Mr. Beck, he was under arrest?

A. Yes, he was.

Q. And prior to the search you made at the Fifth District Station, you had not discovered anything that was connected with clearing house, had you?

A. No, because I had not searched him on the street.

Q. In other words, you had not searched him?

A. Yes.

Q. But he was under arrest?

A. Yes.

Q. Then, at the Station house, did you make a search of Mr. Beck?

A. Yes, I did.

Q. What did that search disclose, if anything?

A. Searching the pockets of his jacket, coat, and searching underneath the trouser leg, beneath the sock of his leg [fol. 8] I found an envelope with sheets of a clearing house of that date.

Q. Then you charged him?

A. Yes, with that particular violation.

Cross-examination.

By Mr. Bessenyey:

Q. Did you recognize this man by sight when you saw him in the automobile?

A. Yes, I had a police picture of him and knew what he looked like.

Q. From your investigation and knowledge of this man's record, did you find it reasonable to make a search of his automobile?

A. Yes, I did.

Q. And you say you took him to the Fifth District where he was searched, and then in the sock, one of his socks, you found the slips, is that true?

A. I found an envelope which contained clearing house sheets.

Q. Do you have the slips here?

A. Yes, I have.

Q. Handing you what for the purposes of identification shall be referred to as an envelope containing numerous clearing house sheets, I will ask you whether or not those [fol. 9] were what you found in the sock.

A. Yes, this is the envelope which we found in his sock, and these clearing house tout sheets.

Q. They represent an interest in a scheme of chance, is that true?

A. Yes.

Q. Known as clearing house?

A. Yes, they do.

OFFER IN EVIDENCE

Mr. Bessenyey: I will offer them into evidence, if your honor, please.

Q. Did you have reasonable and probable cause to stop this man?

A. Yes, I did.

Mr. Willis: Objection; that calls for a conclusion.

Q. Is that true?

A. Yes, I did.

Q. Based on his previous record?

A. Information and previous record and observation.

Redirect examination.

By Mr. Willis:

Q. Mr. Delau, you did not have an arrest warrant, did you?

A. I did not.

Q. You did not have a search warrant?

[fol. 10] A. I couldn't get one under those conditions.

Mr. Willis: I ask that that portion be stricken as not responsive to the question.

Q. Did you have one?

A. No.

Q. When you left the Station, did you have in mind stopping Mr. Beck?

A. I had in mind looking for him in the area of East 115th Street and Beulah, stopping him if I did see him make a stop in that area.

Q. And that is what you did?

A. That is what I did.

Q. Then you had a reasonable opportunity prior to going out to Beulah Avenue where you obviously anticipated Mr. Beck would be to have procured a warrant to arrest or search Mr. Beck?

A. What type of a warrant?

Mr. Willis: Objection.

Q. Did you have an opportunity to do that?

A. I had no opportunity, because there is no warrant available for such an occasion.

Q. No warrant available?

A. No warrant available for that type of an occasion.

Q. You are admitting you had no reasonable grounds to [fol. 11] search him?

A. I did too.

Q. The Clerk's office was open, was it not?

A. Yes, it was.

Q. What time was it?

A. A few minutes before 1:00 o'clock p.m. in the afternoon.

Q. You indicated that you knew of Mr. Beck's previous record?

A. Yes, I did.

Q. What was that, sir?

A. Three arrests for clearing house violations.

Q. When was this?

A. They were all during the year 1959, I believe.

Q. All during the year 1959?

A. Yes.

Q. Then you didn't have any arrests that you knew of as far as 1960 was concerned?

A. Not to my knowledge.

Q. You indicated that you were operating on information?

A. Yes.

Q. From whom did you get this information?

Mr. Bessenyey: Objection.

The Court: Overruled.

A. I couldn't divulge that information.

[fol. 12] Q. I didn't understand you.

A. I couldn't divulge that information.

Q. But someone specifically did relate that information to you?

A. Yes.

Q. And you knew who that person was?

A. Yes.

Mr. Willis: If the Court please, I would like the Court to admonish the Sergeant that he is under oath as a witness in this case, and when the Court overrules objections, it becomes his duty to answer the question.

Q. I will ask you again, Mr. Delau, who told you this information?

A. I don't feel free to give that information. As a police officer, I cannot betray the confidence where someone gave me information.

Mr. Willis: I ask the Court to direct the Sergeant to respond to the question.

Mr. Bessenyey: This is a privileged communication and confidential to the members of the Cleveland Police Department exclusively.

Mr. Willis: The privilege statute creates privileged positions, lawyer-client, doctor-patient, there is no such privi-

[fol. 13] lege that exists between the informer and a policeman.

I call to the Court's attention the People versus Rosario, which has decided this very issue. There was a privilege statute and the Supreme Court took the position that between a privilege and a constitutional right, so far as the

informer's privilege was concerned, the informer's privilege must bow to the right. This officer is now testifying that he had reasonable grounds to do whatever he did.

We are entitled to know the basis of this determination. We should know who the informer was, the reliability of the informer and whether or not the facts as he found them corresponded substantially with what occurred.

I think that on that basis, we are entitled to know and the penalty for the Sergeant refusing would make, in order, a motion to strike all his testimony.

The Court: As far as I know, there is no privileged communication from policeman to informer unless you have a section—

Mr. Bessenyey: Is the Court ordering him to answer that question?

[fol. 14] The Court: Can you give me any authority?

Mr. Bessenyey: It is a confidential matter.

The Court: As far as I know, there is no statute in Ohio, at least regarding the confidential communications between the informer and police officer.

Mr. Bessenyey: It has been a matter of policy in this courtroom not to divulge the informer's name, if there was an informer.

The Court: I am going to withhold ruling on that for the time being.

Mr. Willis: Thank you, Sergeant. No further questions.

The Court: I have a question, Officer.

When you placed this man under arrest, did you place him under arrest for a felony or a belief that a felony had been committed?

The Witness: Under a belief that a felony had been committed under the State law, carrying on a scheme of chance is a felony, and on that basis, I arrested him.

Mr. Willis: We rest on the motion.

[fol. 15] The Court: For the record, I am not going to order the patrolman to testify as to the name of the informer on the grounds of irrelevancy.

Is that all?

Mr. Bessenyey: That is all.

Thereupon the defendant rested.

Thereupon the plaintiff rested.

The above and foregoing, was all of the evidence offered, given and received by each and all of the parties to this cause, at the hearing of same, in said Municipal Court of Cleveland, Cuyahoga County, Ohio.

The Court: The Court will overrule the motion to suppress on the grounds that this was a search incidental to an arrest. The arrest was a proper and lawful arrest and it is determined by the State wherein the arrest was made. In this State, an arrest may be made upon reasonable grounds and belief that a felony has been committed.

(Discussion had off the record.)

The Court: A lawful arrest has been made, and this [fol. 16] was a search incidental to that lawful arrest. The Court will overule the motion to suppress.

Mr. Willis: Exception.

The Court: Do you want to proceed?

Mr. Willis: We are ready to proceed.

STIPULATION

Mr. Willis: I will stipulate that the evidence offered by Sergeant Delau, I will stipulate that he would testify on the evidence in accordance with the manner in which he has testified on the motion to suppress.

The Court: Off the record.

(Discussion had off the record.)

The Court: Let the record so indicate that counsel is entering a plea of not guilty with a finding of guilty and stipulating that the facts in the motion would be the same as would be presented at the trial of this cause.

(Discussion had off the record.)

[fol. 17]

COURT'S FINDING

The Court: The motion to suppress is overruled. There was a plea of not guilty with a finding of guilty. Sentence is $500 & C. Execution of sentence is suspended until December 11th.

[fol. 18]

IN COURT OF APPEALS OF OHIO

EIGHTH DISTRICT, CUYAHOGA COUNTY

January Term A. D. 1962

C.A. 25,890—M.C. 775,572

THE STATE OF OHIO, Plaintiff-Appellee,

vs.

WILLIAM BECK, Defendant-Appellant.

Appeal by William Beck, Defendant-Appellant (LAW).

MANDATE TO MUNICIPAL COURT

This Cause came on to be heard on the appeal on questions of law from the judgment of Cleveland Municipal Court and was argued by counsel for both parties; and upon consideration, the Court finds no error prejudicial to the appellant, and, therefore, the judgment of Cleveland Municipal Court is affirmed and it is ordered that Appellee recover of Appellant its costs herein taxed.

The Court finds that there was reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing Cleveland Municipal Court to carry this judgment into execution. Signed Julius M. Kovachy, Presiding Judge.

I, Emil J. Masgay, Clerk of our said Court of Appeals, do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal of said Court.

Witness, my hand and the seal of said Court, at Cleveland, this Twelfth day of July A. D. 1962.

Emil J. Masgay, Clerk, By A. M. Harrington, Deputy.

[fol. 19]

COURT OF APPEALS OF OHIO

EIGHTH DISTRICT, CUYAHOGA COUNTY

To the Honorable Municipal Court, in and for the City of Cleveland Ohio, Greeting:

You are Hereby Commanded that, without delay, you cause the foregoing judgment of our said Court of Appeals to be carried into complete execution.

Witness, Emil J. Masgay, Clerk of our said Court of Appeals, and the seal thereof, at Cleveland, this Twelfth day of July A. D. 1962.

Emil J. Masgay, Clerk, By A. M. Harrington, Deputy.

Journal 26, page 232

MANDATE

M. C. 775,552
C. of A. 25,890

Doc. ..... Page .....

COURT OF APPEALS OF OHIO

EIGHTH DISTRICT, CUYAHOGA COUNTY

THE STATE OF OHIO, Appellee,

vs.

WILLIAM BECK, Appellant.

Filed Oct 19, 1963.
Helen J. Lyons, Clerk.
Ralph S. Locher, etc., Att'ys for Appellee.
James R. Willis, Atty for Appellant.

Mandate from The Supreme Court of Ohio affirming Court of Appeals—

Mandate from Court of Appeals affirming Trial Court—
Sentence ordered executed.
9.00 Ct Cost
1.00—Bailiff

10.00

[fol. 20]

IN THE SUPREME COURT OF OHIO

No. 37808

THE STATE OF OHIO, Appellee,

v.

BECK, Appellant.

Criminal law—Search and seizure—Search of person after valid arrest without warrant—Articles seized admissible in evidence, when—Identity of informer—Refusal to order disclosure of, not reversible error, when.

1. All searches and seizures without warrants are not prohibited by law. The search of an individual's person on the honest belief of an arresting officer, based upon probable cause that a felony has been committed, does not constitute an unlawful search, and incriminating articles seized during the search may properly be received in evidence against the individual at his trial for having in his possession such articles.

2. It is not reversible error on the part of a trial court to refuse to order the disclosure of the identity of an informer, whose information led in part to the apprehension and arrest of an accused person, where such disclosure would not be helpful and beneficial to the accused in making a defense to a criminal charge lodged against him.

Appeal from the Court of Appeals for Cuyahoga County.

Defendant, William Beck, appellant herein, was charged in the Cleveland Municipal Court under Section 2915.111, Revised Code, with the offense of having in his possession and under his control on the 10th day of November 1961 certain clearing-house slips.

Before trial, defendant filed a written motion to suppress the evidence on the ground that his arrest and the search of

his person, resulting in the discovery and seizure of incriminating evidence, were unauthorized, unwarranted, unreasonable and a violation of his rights under the Fourth and Fifth Amendments to the federal Constitution. The motion was heard and overruled. A plea of not guilty was entered, and the defendant was found guilty and fined.

An appeal on questions of law to the Court of Appeals [fol. 21] resulted in the affirmance of the judgment below, and the cause is now here for decision pursuant to an appeal as of right and the allowance of a motion to require the Court of Appeals to certify the record.

Mr. Ralph S. Locher, director of law, Mr. Richard F. Matia and Mr. Edward V. Cain, for appellee.

Mr. James R. Willis, for appellant.

OPINION—June 26, 1963

ZIMMERMAN, J. Section 2915.111, Revised Code, recites:

"No person shall own, possess, have on or about his person, have in his custody, or have under his control a ticket, order, or device for or representing a number of shares or an interest in a scheme of chance known as 'policy,' 'numbers game,' 'clearing house,' or by words or terms of similar import, located in or to be drawn, paid, or carried on within or without this state.

"Whoever violates this section shall be fined not more than five hundred dollars and imprisoned not more than six months for a first offense; for each subsequent offense, such person shall be fined not less than five hundred nor more than one thousand dollars and imprisoned not less than one nor more than three years."

It has been held that where the violation of a criminal statute carries a penalty of a substantial fine and imprisonment for a period of one or more years and the person convicted under the statute is sentenced to the penitentiary, his offense is classed as a felony. *Ex parte Thorpe*, 66 Ohio App., 128, 32 N. E. (2d), 571, affirmed, 137 Ohio St., 325, 30 N. E. (2d), 335. See also, *In re Thorpe*, 132 Ohio

St., 119, 5 N. E. (2d), 333, and *Smith* v. *Alvis, Warden*, 72 Ohio Law Abs., 267, 268, 134 N. E. (2d), 868, 869.

The Cleveland police had good reason to believe that defendant was regularly engaged in carrying on a scheme of chance involving clearinghouse slips. There was testimony that he had previously been convicted on that score. Information was given to the police by an informer that defendant would be in a certain locality at a certain time pursuing his unlawful activities. He was found in that locality, as predicted, driving an automobile. Police officers stopped [fol. 22] the car and searched it, without result. Defendant was then arrested and taken to a police station, and his clothing was examined, resulting in the discovery and seizure of the illegal clearinghouse slips, which formed the basis of the charge against him and his subsequent conviction.

In response to questions asked him by counsel for the defendant, one of the arresting officers testified as follows:

"A. I heard reports and found that he [defendant] has a record in connection with clearing house and scheme of chance.

"Q. Previous convictions? A. Yes."

Although there are a number of errors assigned by defendant, only two are of real importance:

1. Were the clearinghouse slips obtained by an illegal search and seizure, so as to render erroneous the refusal of the trial court to sustain the motion to suppress?

2. Did the trial court err in refusing to order the police to disclose the identity of the informer?

The search herein took place as an incident of an arrest, and it has been held that a search which is incidental to a valid arrest does not constitute an unreasonable and illegal search. *Harris* v. *United States*, 331 U. S., 145, 91 L. Ed., 1399, 67 S. Ct., 1098.

Defendant was arrested, without a warrant, for what an arresting officer believed and had probable cause to believe was the commission of a felony (Section 2915.111, Revised Code). In the circumstances, then, was such arrest valid?

Section 2935.04, Revised Code, describes when an arrest may be made without a warrant and reads as follows:

"When a felony has been committed, or there is reasonable ground to believe that a felony has been committed, any person without a warrant may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained."

Next, was there probable cause for making the arrest? "Probable cause" is incapable of any exact definition applicable to all cases. However, the Supreme Court of the United States said in *Henry* v. *United States*, 361 U. S., 98, 102, 4 L. Ed. (2d), 134, 80 S. Ct., 168:

"Probable cause exists if the facts and circumstances [Fol. 23] known to the officer warrant a prudent man in believing that the offense has been committed." See, also, *Draper* v. *United States*, 358 U. S., 307, 3 L. Ed. (2d), 327, 79 S. Ct., 329.

Therefore, a question of fact is presented in each case, and where the facts in the possession of the police are sufficient to cause a reasonable and prudent man to believe that a felony has been committed and that the accused committed it, probable cause is present.

In the hearing on the motion of defendant to suppress, an arresting officer testified that the arrest was made on the basis of information supplied by an informer, coupled with knowledge of defendant's prior history. Here, there was not an arrest merely for an exploratory search. According to the testimony, the police, based on the information they had, were actually looking for the defendant for the purpose of arresting him.

In the present case, the knowledge of the police was predicated partly on information furnished by an informer. This raises the constantly recurring question as to what extent officers may rely and act on that kind of information. Of course, to justify an arrest a police officer need not observe the actual commission of a crime, and it is a matter of common knowledge that law-enforcement officers frequently and necessarily act on information supplied by others and on occasion on "tips" coming from informers.

Did the court err in refusing to compel the disclosure of the name of the informer? Defendant contends that he was entitled to such disclosure to test the credibility of the informer and the reliability and sufficiency of the evidence on which the officers proceeded.

As already noted, law-enforcement officers sometimes base a part of their activities on information supplied them by informers, and the only way to verify the reliability of such information is to make use thereof. Informers often frequent the vicinity where crime is planned, and the revelation of an informer's name would not only destroy his access to information concerning criminal activities but might also result in his sudden demise, thereby discouraging others from becoming informers.

For many years, sound policy has dictated that the names [fol. 24] of informers be kept secret. Only in an instance where an informer's identity would be beneficial and helpful to a defendant is there any basis for requiring disclosure. Here the officers acted on the information imparted by the informer plus additional knowledge already in their possession. The revelation of the name of the informer and the information supplied by him would not alter the fact of defendant's guilt. And a mere desire to test the credibility and reliability of the informer is hardly a compelling consideration in the circumstances narrated.

This case is distinguishable from that of *Roviaro* v. *United States*, 353 U. S., 53, 1 L. Ed. (2d), 639, 77 S. Ct., 623, where the informer not only gave information but took an active part personally in trapping and apprehending the offender. No such situation is evident here.

Finally, nothing in the present case shows that the disclosure of the name of the informer would have been of any real value to defendant. He made no active defense, and by stipulation the case was submitted to the court solely on evidence furnished by the police and introduced at the hearing on the motion to suppress.

We conclude that the search and seizure herein without a warrant was justifiable and did not violate defendant's constitutional rights, and we find no prejudicial error in the refusal of the trial court to require the disclosure of the identity of the informer.

Accordingly, the judgment of the Court of Appeals is affirmed.

Judgment affirmed.

MATTHIAS, O'NEILL, GRIFFITH and HERBERT, JJ., concur.

TAFT, C. J., and GIBSON, J., dissent.

GIBSON, J., dissenting. I concur with the majority that, under well established law, the search of defendant and the seizure of the packet of clearinghouse slips, all without a warrant, were lawful if the search and seizure followed a valid arrest. The right to search the person incident to arrest always has been recognized in this country and in England. *Weeks* v. *United States* (1914), 232 U. S., 383, [fol. 25] 392; *United States* v. *Rabinowitz* (1950), 339 U. S., 56. But the validity of the search and seizure without a warrant after an arrest is dependent upon the arrest being valid.

Defendant was arrested without a warrant; hence, the inquiry must turn to whether such arrest was lawful. The Fourth Amendment to the Constitution of the United States and similar provisions of state constitutions, *e.g.*, Section 14, Article I, Ohio Constitution, do not prohibit arrest without a warrant. 6 Corpus Juris Secundum, 579, Arrest, Section 5. The right to arrest without a warrant turns upon (1) the nature of the offense, *i.e.*, whether felony or misdemeanor, and (2) the status of the arrestor, *i.e.*, whether peace officer or citizen. See Sections 2935.03 and 2935.04, Revised Code. In this instance the arrest was made by a police officer, so our inquiry is limited to the right of an officer to make an arrest without a warrant.

Since the rules governing an officer's right to arrest without a warrant vary with the nature of the crime, consideration should be given to whether the crime for which the arrest was made was a felony or a misdemeanor. The arresting officer testified that at 1:00 p. m. on November 10, 1961, he placed the defendant "under arrest for a clearing house operation, scheme of chance." On November 13, 1961, an affidavit was executed by a police officer charging defendant under Section 2915.111, Revised Code, with the

possession of a certain quantity of clearinghouse slips. The warrant issued thereon probably charged a violation of Section 2915.111, although the record is not entirely clear on this point, since the deputy clerk issuing the warrant apparently attempted to adapt a form charging a violation of the municipal code.

The arresting officer testified that when he arrested defendant he (the officer) was "under a belief that a felony had been committed under the state law, carrying on a scheme of chance is a felony." In my opinion, however, his conclusion as to whether he was arresting defendant for a felony is not determinative. Mere honesty and good faith on the part of the arresting officer are not enough. There must also be reasonable grounds for believing that the person arrested has committed an act constituting a felony. 1 Harper and James, The Law of Torts, 275, Section 3.18.

[fol. 26] Several factors should be considered in determining whether the officer had reasonable grounds for believing that the defendant might be guilty of a felony. The factors include the statute which was violated and the circumstances existing at the time of the arrest and thereafter.

Consideration first should be given to the penalty provision of Section 2915.111, Revised Code, which reads as follows:

"Whoever violates this section shall be fined not more than five hundred dollars and imprisoned not more than six months for a first offense; for each subsequent offense, such person shall be fined not less than five hundred nor more than one thousand dollars and imprisoned not less than one nor more than three years." It has been held that a crime which may be punishable by imprisonment in the penitentiary or in a jail at the discretion of the court is a felony. *McKelvy* v. *State* (1912), 87 Ohio St., 1, 7; *Seaman* v. *State* (1922), 106 Ohio St., 177, 179. It is to be noted, however, that in this case the court has no discretion. The statute clearly makes the first offense a misdemeanor and subsequent offenses felonies.

Consideration should also be given to the circumstances at the time of the defendant's arrest and thereafter. These

circumstances must be taken to be as stated by a single Cleveland police officer called to testify on the defendant's motion to suppress evidence, since as stated in the record there is no other evidence before this court. The officer testified that when he left the police station on November 10, 1961, he had a police picture of defendant, knew of three arrests of defendant in 1959 for clearinghouse operations,* had received information from an informer (whose [fol. 27] identity he would not reveal) and "had in mind looking for him [defendant] in the area of East 115th Street and Beulah." A few minutes before 1:00 that afternoon, he first saw defendant driving his automobile lawfully north on East 115th Street. The officer and other officers identified themselves and requested defendant to pull over to the curb as he turned east on Beulah. The officer admitted that defendant was not stopped for any traffic offense.

After defendant stopped, apparently the arresting officer and other officers searched his automobile. The arresting officer testified that while defendant's car was being searched, "I placed him [defendant] under arrest for a

---

* The majority opinion asserts that there was testimony that the defendant had previously been convicted of carrying on a scheme of chance involving clearinghouse slips. Although the arresting officer on direct examination testified that defendant had previous convictions, a careful examination of the testimony shows that he did not clearly indicate what the previous convictions were for. In view of what occurred after the arrest and search and seizure, the logical conclusion is that if the convictions were for clearing-house-slip violations they were convictions under the Cleveland Municipal Code and not under Section 2915.111, Revised Code. Had they been under the state statute, the prosecuting authorities undoubtedly would have taken advantage of the subsequent offense provision of the statute.

It also should be noted that the arresting officer on redirect examination testified as follows:

"Q. You indicated that you knew of Mr. Beck's previous record? A. Yes, I did.

"Q. What was that, sir? A. Three arrests for clearing house violations.

"Q. When was this? A. They were all during the year 1959, I believe."

clearing house operation, scheme of chance." This occurred at 1:00 p. m. on November 10, 1961. The officer also testified that the search of the automobile disclosed nothing other than a hunting knife. Defendant then was taken to the Fifth District Police Station where his person was searched. During this search an envelope of clearinghouse slips was found "beneath the sock of [*sic*] his leg."

Defendant was arraigned in the Cleveland Municipal Court on November 13, 1961, and entered a plea of not guilty. Thereafter on December 4, 1961, defendant filed a motion to suppress the policy slips seized and "all conversations after said illegal arrest," on the ground that the "arrest, search and seizure was without authority, unwarranted, illegal, unreasonable, unconstitutionally [*sic*] and void in that it violates the Fourth Amendment of the Constitution of the United States and the use of any property seized as alleged evidence infringes upon the privilege against self-incrimination, as guaranteed by the Fifth Amendment to the Constitution of the United States."

Following a hearing on the motion, which was denied, it was stipulated that the evidence presented on the motion would be the same as would be presented at the trial of the cause. The court thereupon found defendant guilty and he was sentenced to pay a fine of $500 and the costs.

[fols. 28-29] From the recital of facts surrounding the arrest and subsequent events, it is apparent that the opinion of the complaining witness, the police prosecutor and the Cleveland Municipal Court was that "a subsequent offense" does not exist so as to make an accused guilty of a felony unless the accused had earlier been convicted of violating Section 2915.111. In other words, the mere fact that defendant in this case may have been arrested on previous occasions for possible violations of Section 2915.111 did not make the arrest on November 10, 1961, one for a felony.

Notwithstanding the stated belief of the arresting officer, in view of the provisions of the statute under which the defendant was charged and circumstances existing at the time of his arrest and thereafter, it seems clear that the defendant was arrested in this case for a misdemeanor, the

validity of which arrest must be determined under Section 2935.03, Revised Code.

Consistent with the heading that "Officer may arrest on view," Section 2935.03, Revised Code, provides in pertinent part:

"A * * * police officer shall arrest and detain a person *found violating a law of this state, or an ordinance of a municipal* corporation, until a warrant can be obtained." (Emphasis supplied.) Since Section 2935.04, Revised Code, is expressly limited to the right to arrest a felon without a warrant, it is obvious that the above-quoted statute states the rule relative to the right of named peace officers to arrest misdemeanants without warrants. In my opinion the phraseology "found violating a law of this state, or an ordinance of a municipal corporation" is the equivalent of the more usual rubric, viz., a "crime committed in the presence" of an officer.

As a rule, for a misdemeanor to be committed in the presence of an officer, the facts or elements constituting the offense must be revealed in the presence of the officer and the officer must perceive that the offense is being committed. The offense is committed in the presence or view of the officer when the officer receives knowledge of the commission of the offense through any of his senses, or by inferences properly to be drawn from the testimony of his senses. Accordingly, where through the sense of sight, or smell, or hearing, the officer receives knowledge that a misdemeanor is being committed in his presence he may arrest [fol. 30] the offender without a warrant. 6 Corpus Juris Secundum 580, 582, Arrest, Section 5.

In many types of crimes the suspect is actively doing something, such as breaking, entering, brandishing a knife, burning property, striking an antagonist, or using profane language, which the officer can see, hear, or smell. The violation of law occurring at the time of the defendant's arrest here, however, consisted solely of his having custody or control of a packet of clearinghouse slips under his sock and inside his trousers. Obviously, the officer could neither see, hear nor smell the packet which was unlawfully possessed. In my opinion this misdemeanor was not committed

in the presence of the police officer, or, in the terms of the statute, the defendant was not "*found* violating a law of this state" by the officer, thereby justifying the arrest without a warrant.

To avoid any misunderstanding, I do not assert that the act of possessing contraband materials never can be committed in the presence of an officer. Obviously, if the officer were to see the clearinghouse slips in the hand of the suspect or enough of the slip protruding above a pocket of the suspect to identify it as a clearinghouse slip, the crime of possessing clearinghouse tickets would be committed in his presence.

The problem here is to strike a balance between the public interest in the prevention of crime and the speedy apprehension of criminals and the interest of the individual in freedom from interference at the hands of the law. Nothing I have said should be taken as condoning the activities of this defendant. But, regardless of the conduct of this defendant, I am firmly convinced that the due-process requirements of the common law and constitutional provisions are not to be overlooked. The court must protect the fundamental rights of its citizens even though in doing so the guilty may at times escape punishment. This is the price which a free society must pay to protect its freedom. We cannot ignore the rights of some of the people without doing violence to the rights of all.

There is no place today for a procedure by which a police officer can justify an arrest by the results of his unlawful search and seizure. In other words, an unlawful arrest may not be made legal by the contraband seized. The end cannot justify the means.

[fol. 31] Particularly important in the instant case are the facts that the courthouse was open and that the arresting officer, knowing that he was "looking for him [defendant] in the area of East 115th Street and Beulah," had ample time in which to secure a warrant. There is no indication that the arrest was made without a warrant in order to prevent a threatened escape.

Under all the circumstances of this case, I believe that the arrest was unlawful. Hence the search and seizure was unreasonable and in contravention of the Fourth Amend-

ment of the Constitution of the United States and Section 14, Article I of the Ohio Constitution. Accordingly, the ruling of *Mapp* v. *Ohio* (1961), 367 U. S., 643, requires that the judgment of the Court of Appeals in this case should be reversed and the cause remanded for further proceedings without the use of evidence obtained by the unlawful search and seizure.

Taft, C. J., concurs in the foregoing dissenting opinion.

[fol. 32]

IN THE SUPREME COURT OF OHIO

No. 37808

THE STATE OF OHIO, Appellee,

vs.

WILLIAM BECK.

Appeal from The Court of Appeals for Cuyahoga County.

JUDGMENT—June 26, 1963

This cause, here on appeal from the Court of Appeals for Cuyahoga County, was heard in the manner prescribed by law. On consideration thereof, the judgment of the Court of Appeals is affirmed; and it appearing that there were reasonable grounds for this appeal, it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the Cleveland Municipal Court to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Cuyahoga County for entry.

Journal 45, Page 651

IN THE SUPREME COURT OF OHIO

It is ordered by the Court that rehearing in this case is denied.

Journal 46, Page 50

[fol. 33]

SUPREME COURT OF THE UNITED STATES

No. 696, October Term, 1963

WILLIAM BECK, Petitioner,

vs.

OHIO.

ORDER ALLOWING CERTIORARI—February 17, 1964

The petition herein for a writ of certiorari to the Supreme Court of the State of Ohio is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.